

CONTRACT NO.	SVC004	DEPARTMENT/ DIVISION	Natural Resources and Parks Solid Waste
FEDERAL TAXPAYER I.D.		CONTRACTOR	RE Sources
PROJECT TITLE	Recovery of Used Building Materials		
AMOUNT \$	0	FUND SOURCE	
DURATION	June 15, 2004	TO	June 15, 2005

MEMORANDUM OF AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2004, by and between the KING COUNTY SOLID WASTE DIVISION, a political subdivision in and of the State of Washington ("King County") and RE Sources, whose address is 1155 North State Street, Bellingham, Washington, 98225, and which operates the RE Store at 1440 NW 52nd St., Seattle, Washington, 98107.

RECITALS

WHEREAS, pursuant to Chapter 10.14 of the King County Code, it is King County's goal to achieve zero waste of resources by 2030 through maximum feasible and cost-effective prevention, reuse and reduction of solid wastes, with the intent to divert from landfills solid waste that otherwise has value;

WHEREAS, during internal renovation, construction or demolition projects King County generates solid waste including old building materials that have no use or residual value to King County;

WHEREAS, in the past, some solid waste building materials generated by King County from internal renovation, construction and demolition projects have not been reclaimed, but have gone directly to landfills;

WHEREAS, though the solid waste building materials generated by King County during its internal renovation, construction and demolition projects have no value to King County, some of the waste may be recycled by outside organizations and thereby diverted from King County landfills;

WHEREAS, RE Sources is a non-profit organization that recycles used building materials for reuse and conducts environmental education programs;

WHEREAS, King County desires to have certain salvage services performed by RE Sources as described in this Agreement;

NOW, THEREFORE, in consideration of covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

AGREEMENT

1. SCOPE OF SERVICES

RE Sources shall provide services and comply with the requirements set forth hereinafter and in the following attached exhibits which are incorporated herein by reference:

<input type="checkbox"/>	Certificates of Insurance	Attached hereto as Exhibit	<u>A</u>
<input type="checkbox"/>	ADA/504 Assurance of Compliance and CAP	Attached hereto as Exhibit	<u>B</u>

2. IDENTIFICATION OF SITES AND BUILDING MATERIALS

RE Sources will collect waste building materials at locations within King County as designated by King County for purposes of this Agreement. Designation of sites and waste building materials subject to this Agreement will be in King County's sole discretion. King County and RE Sources will provide each other with a list of the names of their designated representatives who can make decisions regarding this agreement.

3. DURATION AND PURPOSE OF AGREEMENT

A. The Agreement shall commence June 10, 2004 and terminate June 10, 2005. King County and RE Sources may agree to extend the Agreement for an additional two years.

B. The purposes of this Agreement are:

1. to divert solid waste generated from King County internal renovation, construction and demolition projects from landfills through reuse; and
2. that the proceeds from the sale of the recovered materials support community benefits.

4. MODIFICATION OF AGREEMENT

No modification or amendment of this Agreement shall be valid unless evidenced by a mutually acceptable agreement in writing.

5. ITEMS TO BE RECOVERED

RE Sources agrees to accept from King County selected waste building materials scheduled for disposal throughout the duration of this Agreement. King County, in its sole discretion, will identify the building materials ready for disposal that are subject to this Agreement. RE Sources will then have the discretion to choose which waste building materials it will take for recycling from those waste building materials identified by King County as subject to this Agreement. "Waste building materials" may also include furnishings and fixtures that would otherwise be disposed of.

Waste building material collected by RE Sources must be at least 90 percent recyclable waste. This means that 90 percent of the waste can be recovered and reused or transformed into a reusable product or put to a beneficial use. It may consist of a single type of recyclable material or a mixture of two or more types of recyclable material.

Waste building material collected by RE Sources shall be considered to be "Pure Loads of Recyclable Construction, Demolition, Land clearing Waste."

6. METHOD OF RECOVERY

At the sole approval and direction of King County's designated representative for each renovation, construction or demolition project, RE Sources will be asked to pick up waste building materials from King County jobsites. RE Sources crews shall only pick up materials when a King County employee is present on the jobsite.

RE Sources crews will not interfere with the operations of King County staff or King County contractors. RE Sources will keep each jobsite clean and neat, leaving the jobsite the way it found it.

7. TIMEFRAME

The project will operate as directed by King County's designated representative for each project. When King County's representative notifies RE Sources that materials are available, RE Sources must respond within 72 hours, excluding weekends, unless other arrangements are made. "Respond" means that they must either say they are not interested, or come look at the materials and take what they want.

8. UNWANTED ITEMS

Any waste building materials that RE Sources does not remove within the timeframe specified by this Agreement will remain at the site and disposal of the unwanted items will be the responsibility of King County.

9. OWNERSHIP OF ITEMS

While waste building materials are on the King County jobsite, those items are still under the ownership and control of King County. RE Sources will be considered the owner of the waste building materials as soon as it removes the items from the jobsite property. Neither King County nor RE Sources will make payments to each other for the removed items. RE Sources may sell the recovered materials at its RE Store and use the proceeds to support its community and environmental programs.

10. REPORTING

RE Sources will provide King County Solid Waste Division with the total estimated weight, in pounds, of all recovered items, in a format agreed to by both parties. In addition, RE Sources will provide to King County Solid Waste Division a brief report on this project, via e-mail, due eight months after the Agreement commences. This report will describe, in general terms: Types of materials recovered; which materials were most prevalent; examples of the condition of some of the items; problems experienced by RE Sources, if any; and suggestions for improvements. King County may distribute the information in the report in any manner that it so chooses.

11. TERMINATION

Either party may terminate this Agreement at its sole discretion upon giving 30 days notice to the other party.

12. HOLD HARMLESS AND INDEMNIFICATION

- A. In providing services under this Agreement, RE Sources is an independent contractor, and neither RE Sources nor its officers, agents or employees are employees of King County for any purpose. RE Sources shall be responsible for all federal and/or state tax, industrial insurance and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a King County employee under state or local law.

King County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by or on behalf of RE Sources, its employees and/or others by reason of this Agreement. RE Sources shall protect, indemnify and save harmless King County and its officers, agents and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) RE Source's failure to pay any such compensation, wages, benefits or taxes; and/or (2) the supplying to RE Sources of work, services, materials, and/or supplies by RE Sources employees or other suppliers in connection with or in support of the performance of this Agreement.

- B. RE Sources further agrees that it is financially responsible for and will repay King County all indicated amounts following an audit exception which occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Agreement by RE Sources, its officers, employees, agents, and/or representatives. This duty to repay for damages or losses incurred during the performance of the Agreement shall not be diminished or extinguished by the prior termination of the Agreement pursuant to the Duration of Agreement, or the Termination section.
- C. RE Sources shall protect, defend, indemnify, and save harmless King County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of RE Sources, its officers, employees, and/or agents. RE Sources agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. For this purpose, RE Sources, by mutual negotiation, hereby waives, as respects King County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event King County incurs any judgment, award and/or cost arising therefrom including attorney's fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from RE Sources.

Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.

13. INSURANCE REQUIREMENTS

- A. By the date of execution of this Agreement RE Sources shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work hereunder by RE Sources, its agents, representatives, employees, and/or Subcontractors. The cost of such insurance shall be paid by RE Sources or Subcontractor. RE Sources may furnish separate certificates of insurance and policy endorsements for each Subcontractor as evidence of compliance with the insurance requirements of this Agreement.

For All Coverages: Each insurance policy shall be written on an "Occurrence" form. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to RE Sources under this Agreement. RE Sources shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.

B. Minimum Scope Of Insurance

Coverage shall be at least as broad as:

1. General Liability:

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering **COMMERCIAL GENERAL LIABILITY**.

2. Automobile Liability:

Insurance Services Office form number (CA 00 01 Ed. 12-90) covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.

3. Workers' Compensation:

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington.

4. Employers Liability or "Stop-Gap":

The protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability policy.

C. Minimum Limits of Insurance

RE Sources shall maintain limits no less than, for:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and prepay damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation: Statutory requirements of the State of residency.
4. Employers Liability or "Stop Gap" coverage: \$1,000,000.

D. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, King County. The deductible and/or self-insured retention of the policies shall not limit or apply to the RE Sources' liability to King County and shall be the sole responsibility of the RE Sources.

E. Other Insurance Provisions

The insurance policies required in this Agreement are to contain, or be endorsed to contain the following provisions:

1. General and Automobile Liability Policy(s):

- a. King County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of RE Sources in connection with this Agreement
- b. To the extent of RE Sources' negligence, RE Sources' insurance coverage shall be primary insurance as respects King County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by King County, its officers, officials, employees or agents shall not contribute with RE Sources' insurance or benefit RE Sources in any way.
- c. RE Sources' insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2. All Policies:

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after thirty (30) days prior written notice has been given to King County.

F. Acceptability of Insurers

Unless otherwise approved by King County, insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time the foregoing policies shall be or become unsatisfactory to King County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to King County, RE Sources shall, upon notice to that effect from King County, promptly obtain a new policy, and shall submit the same to King County, with the appropriate certificates and endorsements, for approval.

G. Verification of Coverage

RE Sources shall furnish King County with certificates of insurance and endorsements required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by King County and are to be received and approved by King County prior to the commencement of

activities associated with the Agreement. King County reserves the right to require complete, certified copies of all required insurance policies at any time.

H. Subcontractors

RE Sources shall include all Subcontractors as insureds under its policies, and/or shall furnish separate certificates of insurance and policy endorsements from each Subcontractor. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.

14. NONDISCRIMINATION

King County Code Chapters 12.16 and 12.18 are incorporated by reference as if fully set forth herein and RE Sources agrees to abide by all the conditions of said Chapters. RE Sources shall be responsible for ensuring compliance by its subcontractors with the requirements of these Chapters. Failure by RE Sources to comply with any requirements of these Chapters shall be a material breach of Agreement.

- A. During the performance of this Agreement, RE Sources agrees that it will not discriminate against any employee or applicant for employment because of religion, color, race, sex, sexual orientation, age, national origin, marital status, or the presence of any sensory, mental or physical disability, nor tolerate harassment based on any of these categories, unless based upon a *bona fide* occupational qualification. RE Sources will take affirmative action to ensure that applicants and employees are treated, without regard to their creed, color, race, religion, sex, sexual orientation, age, national origin, marital status, or the presence of such disability. Such affirmative action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. RE Sources agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

RE Sources will, prior to the commencement and during the term of this Agreement, furnish King County, upon request and on such forms as may be provided by King County, a report of the affirmative action taken by RE Sources in implementing the terms of this provision, and will permit access by King County to RE Sources' records of employment, employment advertisements, application forms, other pertinent data and records related to this Agreement for the purpose of monitoring and investigation to determine compliance with these EEO requirements.

RE Sources will implement and carry out the obligations contained in its affidavit and certificate of compliance regarding equal employment opportunity. Failure to implement and carry out such obligations in good faith may be considered by King County as a material breach of this Agreement and grounds for termination of the Agreement and dismissal of RE Sources.

- B. During the performance of this Agreement, neither RE Sources nor any party subcontracting under the authority of this Agreement shall engage in unfair employment practices. It is an unfair employment practice for any:

1. employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;
2. employment agency or labor organization to discriminate against any person with respect to membership rights and privileges, admission to or participation in any guidance program, apprenticeship training program, or other occupational training program;
3. employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefore, which indicates any discrimination unless based upon a *bona fide* occupational qualification;
4. employment agency to discriminate against any person with respect to any reference for employment or assignment to a particular job classification;
5. employer, employment agency or a labor organization to retaliate against any person because this person has opposed any practice forbidden by King County Code Chapter 12.18 or because that person has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the provisions of King County Code, Chapter 12.18;
6. publisher, firm, corporation, organization or association printing, publishing or circulating any newspaper, magazine or other written publication to print or cause to be printed or circulated any advertisement with knowledge that the same is in violation of King County Code Section 12.18.030C., or to segregate and separately designate advertisements as applying only to men and women unless such discrimination is reasonably necessary to the normal operation of the particular business, enterprise or employment, unless based upon a *bona fide* occupational qualification; and/or
7. employer to prohibit any person from speaking in a language other than English in the workplace unless:
 - a. the employer can show that requiring that employees speak English at certain times is justified by business necessity, and
 - b. the employer informs employees of the requirement and the consequences of violating the rule.

15. SECTION 504 AND AMERICANS WITH DISABILITIES ACT

RE Sources has completed a Disability Self-Evaluation Questionnaire for all programs and services offered by it (including any services not subject to this Agreement); and has evaluated its services, programs and employment practices for compliance with Section 504 of the Rehabilitation Act of 1973, as amended, ("504") and the Americans with Disabilities Act ("ADA"). Re Sources will prepare a Corrective Action Plan for the structural, programmatic, and/or service changes necessary at each of its premises within the State of Washington to comply with 504 and the ADA, and it is attached as an exhibit to this Agreement and incorporated herein by reference.

16. NOTICES

Whenever this Agreement provides for notice to be provided by one party to another, such notice shall be in writing.

Any time within which a party must take some action shall be computed from the date that the notice is received by said party.

17. AGREEMENT AMENDMENTS

Either party may request changes to this Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

18. VENUE AND GOVERNING LAW

In the event that either party shall bring a suit or action on or arising out of this Agreement, it is mutually agreed that such suit or action shall be brought only in King County, Washington. It is further agreed that Washington law shall be the substantive law governing this Agreement, without reference to Washington's choice of law rules.

19. ENTIRE AGREEMENT/WAIVER OF DEFAULT

The parties agree that this Agreement is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by King County, which shall be attached to the original Agreement.

KING COUNTY:

RE SOURCES:

FOR

Signature

Date

(printed name)

(title)

RE SOURCES

Approved as to Form:
OFFICE OF THE KING COUNTY
PROSECUTING ATTORNEY

Date